ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	
	:	Case Nos. 2008-2172 and 2008-2119
Appellee,	:	
	:	On Appeal and Certified Conflict from
v.	:	the Marion County Court of Appeals,
	:	Third Appellate District, Case No. 9-
Rusty Jordan,	:	08-11
	:	
Appellant.	:	

REPLY BRIEF OF APPELLANT RUSTY JORDAN

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JUL 06 2009

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Argument

Proposition of Law No. I:

In order to prove escape from postrelease control, the State must show that a trial court imposed postrelease control in open court pursuant to R.C. 2929.19(B)(3) and then journalized the sanction in the judgment entry of sentence. State v. Bezak, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶16, applied.

Postrelease control is different than other types of alleged detention because this Court has repeatedly held that the Adult Parole Authority only has the power to impose the sanction when the trial court has both notified the defendant at sentencing and imposed the sanction in the sentencing entry: "'[B]ecause a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing, any sentence imposed without such notification is contrary to law' and void." State v. Bloomer, --- Ohio St.3d ---, 2009-Ohio-2462, at ¶5, quoting State v. Jordan, 104 Ohio St.3d 21, 2004-Ohio-6085, at ¶23, and citing State v. Beasley (1984), 14 Ohio St.3d 74. "[W]hen a trial court fails to notify an offender that he may be subject to postrelease control at a sentencing hearing, as required by former R.C. 2929.19(B)(3), the sentence is void. . . . " State v. Bezak, 114 Ohio St.3d 94, 2007-Ohio-3250, at ¶16. Further, this Court has ruled that unless postrelease control is correctly imposed, "*the Adult Parole Authority is without authority to impose it.*" Hernandez v. Kelley, 108 Ohio St.3d 395, 2006-Ohio-126, at ¶20, quoting State v. Jordan, 104 Ohio St.3d 21, 2004-Ohio-6085, at ¶19 (emphasis supplied by the Court in Herndandez). Otherwise, postrelease control would

not have survived a separation of powers challenge. Woods v. Telb, 89 Ohio St.3d 504, 512-3, 2000-Ohio-171.

The State is correct that generally, a court speaks only through its entry. State's Brief at 4. But in the context of postrelease control, this Court has held that more is needed. In Jordan, this Court considered two cases in which, like the present case, trial courts had "failed to notify the offenders about postrelease control at the sentencing hearings but properly incorporated postrelease control into the respective sentencing entries." Jordan at ¶4. This Court noted that "[a]s a general rule, a court speaks only through its journal." Id. at ¶4. But this Court then held that postrelease control requires more. Id at ¶9-10 ("the General Assembly has placed additional duties on the trial courts of this state in furtherance of its goal of achieving 'truth in sentencing'"). Where the oral notice is not properly given at the sentencing hearing, the sentence is void. See, Id. at ¶24-7; and Bloomer, at ¶5 ("'[b]ecause a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing, any sentence imposed without such notification is contrary to law' and void").

The State is also correct that "irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority" is an affirmative defense under R.C. 2921.34(B). But to get to the point of an affirmative defense, the State must still show "detention." Absent in-court notification, the Adult Parole Authority is only purporting to "detain" a

defendant. Absent in-court notification, a defendant is not bound to follow the Adult Parole Authority's direction.

Further, contrary to the State's assertion, Mr. Jordan is not collaterally challenging the original sentencing entry, he challenges only the legal significance of the entry standing by itself. Given the requirements of R.C. 2929.19 and this Court's decisions holding that an entry without in-court notification is void, the entry does not, by itself, prove detention. The entry is merely the second of two requirements. The State must show both in-court notification and imposition in the judgment entry. Otherwise, the State has proven only that the APA was purporting to impose postrelease control, not that it had actually imposed postrelease control. Without in-court notification, the entry is void, meaning it does not legally exist. The State's admission of an entry, with nothing else, does not prove the validity of the entry beyond a reasonable doubt.

The State asserts that the APA's notice to Mr. Jordan was sufficient to put him on notice of his responsibilities, but that notice was meaningless by itself. The APA cannot create authority to impose postrelease control simply by asserting it. As the First District recognized, in-court notification is crucial because many defendants do not receive copies of their judgment entries. State v. Brown, 1st Dist. Nos. C-020162, C-020163, C-020164, 2002-Ohio-5983, at ¶27.

Conclusion

For the Adult Parole Authority to have authority to impose postrelease control, a trial court must orally notify a defendant at sentencing and impose the sanction in the judgment entry. Absent notification at sentencing, the entry is void and the Adult Parole Authority lacks the power to detain a defendant. Absent power to detain, a defendant is not detained. He is free to go about his otherwise lawful life.

Accordingly, to prove that a defendant escaped from postrelease control, the State must submit into evidence both the judgment entry of sentence imposing the sanction and the transcript that includes oral notification of the sanction. Because the State failed to prove in-court notification in this case, Mr. Jordan's conviction should be vacated. This court should reverse the decision of the court of appeals, vacate Mr. Jordan's conviction, and order him discharged.

Respectfully submitted,

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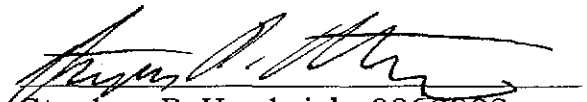

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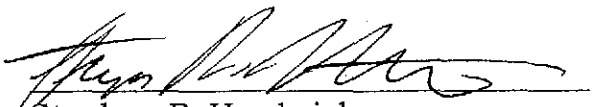
I certify that a copy of the foregoing was sent by e-mail to Denise Martin, Assistant Marion County Prosecutor at dmartin@co.marion.oh.us, on July 6, 2009.



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